FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 358/2005
(Shakiloddin Sarfoddin Badgujar & ors. Vs. Mohd. Salim Mohd. Azimbhai & ors.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Firdos Mirza, Adv. for the appellants.
Mr. S.C. Bhalerao, Adv. for respondents.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 11th September, 2007.

Heard the learned counsel for the parties.

The appellants are the legal heirs of the original plaintiff. A suit was filed by the plaintiff against the defendant nos. 1 to 4 who are her brothers, and the defendant nos. 5 and 6 who are her mothers, for declaration that the Will executed by her father Sharfoddin Badgujar was not legal and valid as Sharfoddin Badgujar could not have bequeathed all his property to the defendant nos. 1 to 4 without the consent of the plaintiff, under the Muslim Law. According to the plaintiff, her consent was not taken for making a bequest in favour of the defendant nos. 1 to 4 but, in fact, a consent letter was prepared on the blank papers on which her signatures were forcibly obtained by the defendant nos. 1 to 4.

The defendant nos. 1 to 4 denied that they had obtained the signature of the plaintiff on a blank

paper. It was pleaded on behalf of the defendants that the plaintiff had not only consented to the bequest of the property in favour of the defendant nos. 1 to 4, but had also executed a relinquishment deed thereby relinquishing her share in the suit property in favour of the defendant nos. 1 to 4. It was pleaded that the defendant nos. 5 and 6 as well as the plaintiff had consented to the bequest and, therefore, the suit filed by the plaintiff was liable to be dismissed with costs.

The trial Court framed the issues and after considering the evidence tendered by the parties on record, came to a conclusion that the Will executed by Sharfoddin was valid and legal one as the defendants had succeeded in proving the consent letter and relinquishment deed which were executed by the plaintiff. The trial Court considered the voluminous evidence, both oral and documentary, to hold that the plaintiff had consented to the bequest of the property in favour of the defendant nos. 1 to 4 and also that she relinquished her share in the suit property. The Court also considered some of the admissions of the witnesses examined on behalf of the parties to hold that the signatures of the plaintiff were not forcibly obtained on blank papers. The attesting witnesses to the Will as well as the relinquishment deed were examined by the defendant nos. 1 to 4. The first appellate Court confirmed the findings recorded by the trial Court after reappreciation of the evidence

tendered by the parties on record.

The only submission made on behalf of the appellants is that the trial as well as the appellate Court wrongly held that the plaintiff had not lodged a report of the incident whereby the defendant nos. 1 to 4 had forcibly obtained the signature of the plaintiff on blank papers, with the concerned Police Station in Yavatmal. The counsel for the appellants submitted that a copy of the report submitted to the Police Station on 9/2/2001 was filed on record and both the Courts had miserably erred in holding that the said report was not the one filed by the plaintiff on 9/2/2001. According to the counsel for the appellants, non-consideration of the material piece of evidence in the form of Exh.40, vitiates the judgment of the trial and the appellate Court and also gives rise to the substantial question of law. The submissions made on behalf of the appellants, are refuted by the counsel for the respondents.

I have minutely perused the judgments passed by the trial as well as the appellate Courts. The trial and the appellate Courts, as pointed out herein above, have considered the voluminous documentary and oral evidence to hold that the defendant nos. 1 to 4 have proved their case that the plaintiff had consented to the bequest of the property in their favour. There is nothing wrong with the observations of the Courts that the plaintiff had not filed a report of the incident to the

concerned Police Station at Yavatmal, on 9/2/2001. Though the counsel for the appellants showed a xerox copy of the document at exh. 40, it is conspicuous to note that the report does not bear the date and hence it is rightly observed by the Court that the report was not filed by the plaintiff on 9/2/2001. It is further conspicuous to note that the plaintiff had not filed the report in the police Station, but it was her son Shakiloddin who had filed the report a copy of which was probably placed on record and is marked as Exh. 40. Moreover, it is also the case of the plaintiff that she had issued notice Exh. 17, after the filing of the report and had also issued a notice through the paper publication. The Courts observed that the defendants had replied to the notice at exh. 17 and the notice issued in the paper publication. Therefore, the case of the defendants rests on the Will deed, consent letter as well as the relinquishment deed. The Courts rightly considered that the defendant nos. 1 to 4 had examined the attesting witnesses to the Will deed and the relinquishment deed and the fact that the defendant nos. 5 and 6 had also consented to the bequest of the property in favour of the defendant nos. 1 to 4. The Court further considered that the plaintiff had failed to cross-examine the defendant nos. 5 and 6 to prove that her signatures were forcibly obtained on the consent letter. Apart from the aforesaid important piece of evidence, several other pieces of evidence

were also considered by both the Courts to record the findings of fact in favour of the defendant nos. 1 to 4 and against the plaintiff so far as the plaintiff's plea of defendant nos. 1 to 4 obtaining her signatures on blank papers forcibly, was concerned. It appears that the Courts had rightly held that the plaintiff had not lodged any report with the concerned Police Station. Assuming that the plaintiff had lodged a report with the concerned Police Station on 9/2/2001, the non-consideration of that report would not vitiate the findings recorded by both the Courts as the report filed by the plaintiff to the Police Station was not material piece of evidence which ought to have been considered by both the Courts before tendering the judgment. Nothing could turn on the report at exh.40 even assuming that it was one filed by the plaintiff herself on 9/2/2001.

The findings recorded by both the Courts are pure findings of facts which do not give rise to a substantial question of law.

Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP